IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9387 of 2001
WITH
SPECIAL CIVIL APPLICATION No 9578 of 2001
WITH
SPECIAL CIVIL APPLICATION No 9580 of 2001
WITH
SPECIAL CIVIL APPLICATION No 9581 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAJENDRA DUGAR
Versus
STATE OF GUJARAT

Appearance:
MS MITA S PANCHAL for Petitioner.
MR UR BHATT, AGP.for Respondents.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/12/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 When this group of petitions was first listed before the Division Bench (Coram :M.S.Shah & D.A.Mehta,JJ), on behalf of the petitioners leave was sought to amend the petition and challenge the vires of provisions of Section 3(A)(3) of the Motor Vehicles Act,1958. Accordingly, on 17/10/2001 permission to amend the petition was granted and the office was directed to place the aforesaid petitions before the Appropriate Bench taking up vires challenged petitions. This group of petitions were thereafter listed before the Court (Coram:
D.M.Dharmadhikari, C.J. and Ravi R.Tripathi,J) and on 22/10/2001, the following order was passed :

"The learned counsel appearing for the petitioners does not press the question of vires of Section 3(A)(3) of the Bombay Motor Vehicles Tax Act,1958, raised in these petitions. Therefore, the matters be placed before the appropriate Bench in regular course".

2 The matters thereafter, were onceagain listed before the Division Bench and on 29/10/2001 notice was issued and made returnable on 3/12/2001. On 4/12/2001, Rule was made returnable on 20/12/2001.

3 We have heard Ms.Mita S.Panchal, learned Advocate appearing on behalf of the petitioners and Mr.U.R.Bhatt, learned Assistant Government Pleader, appearing on behalf of the respondents. Mr.Bhatt referred to paragraphs 9, 10 and 11 of the affidavit-in-reply and submitted that the respondents have charged tax under the Provisions of Section 3(A)(3) of the Act, as is permissible to them under the law. The submission made on behalf of the petitioners is that tax is collected in advance at the rate more than what the respondents are entitled to recover under the statute.

4 In light of the submissions made by both the parties it is necessary to reproduce the original prayers and the reliefs claimed in the petitions :

14.A. "Your Lordships may be pleased to issue a

writ of mandamus or a writ in the like nature, order or direction directing the respondent authorities to collect tax under Bombay Motor Vehicle Tax (as per Annexure A to this petition) and not under the Bombay Motor Vehicle Tax Act,1958 for the vehicles owned by the petitioner bearing Registration No.RJ-27-P-4222, No.RJ-27-P-4224, No.RJ-27-P-4488, No.RJ-27-P-4888 and No.RJ-27-P-4688.

B. Your Lordships may be pleased to issue writ, order or direction of appropriate nature to the respondent Authorities for refunding the amount of tax paid by the petitioner for the month of October,2001 at the rate of Rs.20,500/-, Rs.19,500/-, Rs.17,500/-, Rs.18,000/- and Rs.18,000/- respectively for the five buses in question bearing registration No.RJ-27-P-4222, No.RJ-27-P-4224, No.RJ-27-P-4488, No.RJ-27-P-4888 and No.RJ-27-P-4688 after deducting the tax liable to be paid as per the letter dated 27.9.2001 under the BMV Tax Act at Annexure A to the present petition".

5 The question whether the petitioners have paid tax in excess of the amount that they were otherwise required to pay would be a question of fact to be based on calculation as per operation of Section 3(A)(3) of the Act. In light of this situation Ms.Panchal submits that the petitioners would approach the respondent authorities with an appropriate representation and point out the amount of excess tax recovered and claim refund of the amount which according to the petitioners is excess as against the amount of tax already paid by the petitioners. The petitioners shall make necessary representation within a period of one week from today and the respondents shall dispose of the same within a period of four weeks from the date of receipt of the representation, after hearing the petitioners if any adverse view is taken. The petitions are disposed of accordingly. Rule discharged. There shall be no order as to costs. Direct service is permitted.

Sd/- Sd/-
(B.C.Patel,J) (D.A.Mehta,J)

m.m.bhatt